

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.347 OF 2015

Bansi Shrirang Ovhal ... APPELLANT

VERSUS

The State of Maharashtra & others ... RESPONDENTS

.....
Shri S.B. Bhosale, Advocate for appellant
Shri A.M. Phule, A.P.P. for State
.....

CORAM: A.I.S. CHEEMA, J.

DATED: 1st April, 2016.

ORAL ORDER :

1. Heard learned counsel for the appellant - original complainant and learned A.P.P. for the State. Perused record.
2. Learned counsel for the appellant submits that, the respondent Nos.2 to 4 (original accused) had on 25.11.2010, entered the hut of the appellant and beaten him by sticks. The appellant was old person, aged 55 years at the time of incident

and he fell unconscious due to the beating. The counsel submits that, although the medical certificate (Exh. 37) shows that the injury was simple, but because of the age, the appellant fell unconscious at the time of incident. It is stated that, the wife of appellant is also a labourer, was working at the relevant time at Mumbai and he waited for her to come back and only thereafter the F.I.R. was filed on 1.12.2010. According to the counsel, because the appellant had contusion on his leg, he could not file the F.I.R. earlier and as he was waiting for his wife, he did not file the F.I.R. earlier. The counsel submits that, the reasonings recorded by the trial Court in para 17 of the judgment that when the injury was simple, the appellant could not have been in semi-conscious state, are not maintainable. The counsel further submits that, although four points for consideration were framed by the trial Court, each point for consideration was not separately and elaborately dealt with and thus, according to the counsel, this is a fit case to interfere in the acquittal.

3. This is appeal against acquittal. The principle of presumption of innocence till guilt is proved has got strengthened due to the acquittal recorded by the trial Court. It is thus necessary to carefully consider the matter if the same is to be entertained.

4. I have gone through the record available and the judgment of the trial Court. The record shows that the accused No.1 is brother and accused No.3 is nephew of the complainant. It also appears that between the parties civil dispute was pending. The appellant claimed in his evidence that on 25.11.2010 he has been assaulted by kicks, blows and by sticks. He claimed that, his hut was burnt. Still, the F.I.R. was lodged belatedly only on 1.12.2010. The trial Court has considered the evidence as well as the fact that before the F.I.R. was lodged, the wife had on 28.11.2010, given the N.C. report, in which there were no contents regarding putting the hut on fire. The record also shows that, there was medical certificate dated 29.11.2010, which was in view of Police Yadi. In spite of all this, the F.I.R. was registered only on 1.12.2010. The trial Court appears to have rightly recorded that the delay could not be said to have been satisfactorily explained. The trial Court has discussed the fact that on 28.11.2010 informant along with his wife must have visited the police station when N.C. was registered, but no F.I.R. was filed. It also noticed that the panch witnesses of the spot had not supported the prosecution. Trial Court recorded that, except the evidence of complainant, there was no other witness of the alleged incident. It was also noticed that, in evidence, the

complainant did not whisper about any threat given by the accused persons.

5. The trial Court discussed the evidence to conclude that the evidence of the complainant was exaggerated. Making these observations, the trial Court has acquitted the respondent - accused. Considering the record available and reading the same with the reasons recorded by the trial Court, it shows that the view taken of the evidence by the trial Court is a possible view. When that is so, only because some other view could be taken, would be no reason to interfere with the acquittal recorded.

6. As such, there is no substance in the appeal. Admission of the appeal is declined. The appeal is dismissed.

(A.I.S. CHEEMA, J.)